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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,928	01/09/2002	Dah-Shiarn Chiao		9600
7590	09/15/2004		EXAMINER	
			MCKANE, ELIZABETH L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

S.C

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/043,928	CHIAO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Leigh McKane	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 July 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-98 is/are pending in the application.
- 4a) Of the above claim(s) 49-98 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10, 17, 18, 25-34, 41 and 42 is/are rejected.
- 7) Claim(s) 11-16, 19-24, 35-40 and 43-48 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>010902, 042302</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

***Claim Rejections - 35 USC § 102***

- The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

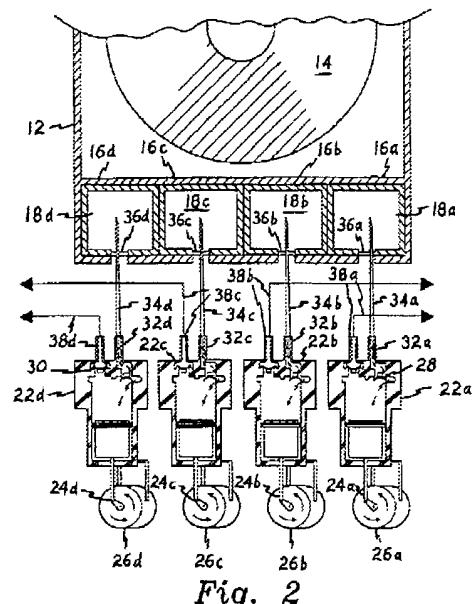
A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- Claims 1, 3-6, 9, 10, 25, 27-30, 33, and 34 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Kaslon (US 2001/0048641 A1).

Kaslon teaches a scent and multimedia bearing card **12** for use with a separate scent release and multimedia playback system **10**. The card **12** includes a scent storage medium **18**



**a-d**, an encapsulated DVD or CD **14**, and scent release/playback control information (section [0038], lines 8-17). The cartridges **18a-d** may contain a plurality of scents, smells, aromas, or odors. The device further includes a scent release unit **34a-d** comprised of a tube connecting the reservoir to a scent release chamber **22a-d**.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2, 7, 8, 26, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaslon.

With respect to claims 2 and 26, Kaslon does not disclose that the CD/DVD is removable from the housing structure 12. However, it is deemed obvious to one of ordinary skill in the art to do so in order to make the housing structure reusable, making its use more economical.

As to claims 7, 8, 31, and 32, Kaslon discloses releasing natural scents such as “the sea and pine forest” (section [0037]). It is well known in the art to use naturally-derived scents for therapeutic and medical purposes. Examples of these types of scents are lavender and essential oils.

6. Claims 17, 18, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaslon in view of Baron et al (U.S. Patent No. 5,192,342).

Kaslon is silent with respect to an absorbent material positioned within the scent release chamber or an electrostatic scent release means. Baron et al teaches an apparatus for releasing a scent to an environment which can release the scent a variety of ways. These ways include a timed aerosol (as in the invention of Kaslon), a non-volatile solid carrier (i.e. an absorbent material), ionization, or electrostatic dispersal. See col.7, lines 40-46. Therefore, it is deemed obvious to one of ordinary skill in the art to substitute other scent dispersal means for the aerosol dispenser of Kaslon.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claim 10 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 or 61 of copending Application No. 10/436608. Although the conflicting claims are not identical, they are not patentably distinct

from each other because they differ only in wording. The structure claimed in claim 10 of the present invention is encompassed by both of claims 1 and 61.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Objections***

9. Claim 33 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Currently, claim 33 depends from itself. It has been treated as if it depends from claim 25.

### ***Allowable Subject Matter***

10. Claims 11-16, 19-24, 35-40, and 43-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: The scent release chamber of Kaslon does not have an upwards facing opening covered by a moveable cover, as set forth in claims 11 and 35. Furthermore, Kaslon fails to teach or suggest a corona discharge pin for creating a corona discharge, as set forth in claims 19 and 43.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
13 September 2004